IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Dr. Mohan Lal Meghnani
vs
State of Rajasthan & Ors.

S.B. CIVL WRIT PETIITON NO.177/1994 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 17th August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.M.R. Singhvi, Advocate, for the petitioners.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

The petitioner in this writ petition has challenged the letter dated 1.1.1993 by which he was communicated adverse remarks in his APARs of the year 1991-92 and the letter dated 29.9.1993 by which his representation dated 3.5.1993 filed there against was rejected by the State Government. The case of the petitioner is that adverse remarks were recorded in his APARs

pertaining to the period when he was working as Medical Officer in the Government Hospital, Balotra, District Barmer. He as a Medical Officer was required to carry out and perform such duties which were entrusted to him by the Senior Specialist Incharge of the Government Hospitals and he has always been discharged his duties as directed by the Senior Officers. He has never disobeyed or deviated the instructions/orders of his superior officers. The petitioner has alleged that even though no norms were prescribed by the Government nor any such norms were brought to his notice for being achieved in the matter of Family Welfare Programme, he received a communication dated 1.2.1993 conveying him adverse remarks for the year 1991-92 to the effect “Family Welfare Work Un-satisfactory”. It has also been averred that for the purpose of recording remarks, the State Government has framed the Rules which are known as APAR Rules, 1976. According to which, the Reporting Officer is required to supervise the working of the incumbent and is required to watch his performance from a close distance and if there is any mistake, omission or defect in the performance of the duties, the same

shall be noticed and pointed out by the Superior Officer and necessary instructions/guidance and if need be, orders, shall be issued so as to over come those defects, omissions, commissions etc. If despite of instructions/guidance the mistake persists then only the same can be recorded as adverse remarks in the service dossier of a Government servant. The petitioner has alleged that so far as the period for the year 1991-92 is concerned, at no point of time any fault, grievance etc was ever pointed out by his superior officer. He therefore, submitted representation against adverse remarks but the Government without applying its mind rejected the same without assigning any reason whatsoever. It is alleged that even he was charged of unsatisfactory performance in the mater of Family Welfare Programme, but the respondent no.3 who was his immediate Superior Officer gave a appreciation certificate on 5.4.1992 stating therein that petitioner participated in the Family Welfare Programme with enthusiasm and devotion and on account of pursuation of the petitioner for sterilization. The petitioner has placed on record the following Schedule showing that the

persons mentioned therein having same kind of adverse remarks were communicated and for all of them, the remarks have been expunged.

S.NO.	NAMES OF OFFICERS	PLACE OF POSTING	NO. OF CASES
1.	Dr.M.L. Bohara	Govt. Hospital, Balotra	1
2.	Dr.M.L. Meghnani	Govt. Hospital, Balotra	1
3.	Dr.M.L. Kharwal	P.H.C. Jasol	7
4.	Dr.G.L. Patel	P.H.C. Dakha	0
5.	Dr.G.S. Rathore	C.H.C. Siwana	1
6.	Dr.M.L. Morya	P.H.C. Gunga	0
7.	Dr. Santosh	P.H.C. Gadara	2
8.	Dr.Ashok Meghwal	P.H.C. Nokhra	0
9.	Dr.Mukesh	P.H.C. Thob	0
10.	Dr. Mrs. Pankaj	P.H.C. Dhorimana	0
11.	Dr. Miss Saroj	P.H.C. Patodi	0
12.	Dr.ChandraMohan Choudhary	P.H.C. Asda	0

The petitioner has submitted that about three candidates i.e., Dr. M.L. Bohra, Dr. G.L. Patel, Dr.M.L. Moriya in whose APARs also similar remarks were conveyed but they were later expunged. It has also been submitted that in the case of Dr. G.L. Patel and Dr. M.L. Moriya there was not a single case of motivation for sterilization yet their adverse remarks have been expunged. It is submitted that respondents have given discrimination treatment to the case of the petitioner. It is therefore, prayed that the

adverse remarks recorded in the APARs of the year 1991-92 of the petitioner should be quashed.

The writ petition has been contested by the respondents, who in the reply have come out with the plea that as per the instructions issued by the order dated 22.8.1989, the Medical Officer is required to bring minimum single case of sterilization every month. In fact, the petitioner failed to achieve the traget and in the year 1991-92 there was only a single case of sterilization and right from 1982 to 1993-94, there are only 17 sterilization cases, which are much lesser than the norms. As regards the allegation of discrimination, the respondents have stated in the reply that the facts of each case are altogether different and the petitioner cannot compare his case with others and that too, in absence of complete facts.

In rejoinder, the petitioner has again reiterated that there were 11 medical officers against whom there were adverse remarks but the Government expunged those adverse remarks and in the case of the petitioner the same has not been

expunged.

I have heard learned counsel for the parties and perused the record.

Shri M.R. Singhvi, learned counsel for the petitioner relied upon the earlier judgment of this Court in S.B. Civil Writ Petition No.916/2001 (Subhash Chandra Grover Vs. Stte of Rajasthan & Ors, decided on 1.10.2001). In the said case, the petitioner while working on the post of Inspector Grade-I in Excise Department was subjected to two Memorandum of Charges dated 10.3.1997 and 28.2.1998 under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 on the charges that he has not completed the target of registering minimum number of cases for prosecution under the Rajasthan Excise Act, 1950 during the financial years 1995-1996 and 1996-97 respectively. The disciplinary autority vide order dated 17.7.1997 held the petitioner guilty of the aforesaid charge and punished him with the penalty of stoppage of one grade increment without cumulative effect. Similarly by another order dated 30.3.1998, the

disciplinary authority held the petitioner guilty of the said charge and punished him with the penalty of censure. The attention of the court in that case was also invited to the Division Bench judgment in the case of State of Rajasthan & Ors. Vs. Lala Ram (D.B. Civil Special Appeal No.616/2001, decided on 20.7.2001) wherein it was held that the procedure by which the practice of subjecting a person for disciplinary proceedings and punishing him for mere non-fulfillment of projected targets without anything more does not warrant imposing of any punishment but it only warrants issuing note of advise. The learned Single Judge has also taken note of the earlier judgment of the Single Bench in the case S.B. Civil Writ Petition No.490/1998, decided on 8.7.1998, which judgment was upheld by the Division Bench in D.B. Civil Special Appeal No.53/1999, decided on 4.4.1999 and even the Special Leave Petition filed against that judgment was also dismissed by the Hon'ble Supreme Court approving the following observations made by the learned Single Judge in the Lalaram's case (supra):

> "It is not known as to how and under what circumstances and guidelines, the department can fix a quota for registering of minimum criminal cases for an inspector. Even in a given case, if all the crimes are detected in certain area and every person committing the crime is apprehended and number of crimes falls short of 72, such Inspector even though most efficient in apprehending all the culprits is sured to be censured for the reason that the department has fixed a quota of 72 cases which must be registered at any cost by any Inspector. This logic is not understandable. It can lead to false implication in the criminal cases so as to avoid the censure order from the department."

The learned Single Judge therefore while quashing the order of penalty directed that the entires, if any, made against the petitioner in his service book shall stand deleted. It has also been observed that of course the petitioner's case for further promotion shall be considered, as if no punishment has been imposed on him.

Shri M.R. Singhvi, learned counsel for the petitioner has also relied upon the judgment of this Court in S.B. Civil Writ Petition No. 4306/1998 (Naval Singh Vs. State of Rajathan & Ors, decided on 21.8.2000) In this case, the petitioner after being subjected to disciplinary

proceedings was awarded punishment of stoppage of one grade increment without cumulative effect on the charge of petitioner's failure to recover revenue target of 4.165 laks. The learned Single Judge while relying upon the earlier decisions dated 19th May, 2000 in S.B. Civil Writ Petition No.402/1998 (Subhash Chandra Grover Vs. State of Rajasthan & Ors) allowed the writ petition and quashed the order of penalty.

On the other hand, Shri Rameshwar Dave, Dy. Government Advocate argued that the adverse remarks have been recorded in the APARs of the petitioner for the year 1991-92 for the valid reason, which was based on his performance and as has been reported by his immediate Superior Officer, who had occasion to watch him perform from close distance. The adverse remarks therefore have rightly been made in his APARS

I have given my thoughtful consideration to the arguments raised by the learned counsel for the parties and perused the record.

It is trite law that an officer entrusted with

duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, on statement of facts on an overall assessment of the performance of the Subordinate Officer. However, at the same time, the Reporting Officer before forming an opinion to be adverse to the Subordinate Officer, should confronted the officer with such information and then only the same may be made part of the report. Reference in this connection may be made to the following observation of the Hon'ble Apex Court in the case delivered in State of U.P. Vs. Yamuna Shanker Misra reported in 1997 (4) SCC 7: -

> "....The Officer entrusted with the duty to writ confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an over all assessment of the performance of the Subordinate officer. It should be founded upon facts or circumstances.
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> Before forming an opinion to be adverse, the Reporting Officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and

> then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such opportunity, the officer fails to perform the duty, correct his conduct or imporve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him."

On the same line, the Hon'ble Apex Court in the case delivered in Union of India Vs. E.G. Nambudiri reported in 1991(3) SC 38 held as under:-

> "....Therefore, in the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily,it must act in a fair and just manner. It is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. However, it is does

> not mean that the administrative authority is at a liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion, if such an order is challenged in a Court of law, it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. If is always open to an administrative authority to produce evidence aliunde before the Cort to justify its action."

The Hon'ble Apex Court in the case delivered in Rajasekhar Vs. State of Karnataka reported in 1996 (10) SCC 369 observed as under: -

> "It is now settled law that object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to at fairly or objectively in assessing the character, integrity and performance of the incumbent."

Examined in the light of the law enunciated by the Hon'ble Supreme Court, I find that in the

present case the respondents have not been able to show that they have adhered the guidelines contained in the APARs Rules, 1976. According to these Rules, the Reporting Officer shall supervise the working of the incumbent and will watch his performance form a close distance and if there is any mistake, omission or defect in the performance of the duties, the same shall be noticed and pointed out by the Superior Officer and necessary instructions/guidance and if need be, orders, shall be issued so as to over come those defects, omissions, commissions etc. The petitioner in para no.5 of the writ petition specifically alleged non-compliance of the said rules but the respondents have not given any categorical answer to this plea raised by the petitioner.

What is more, it becomes more than obvious from the records of this case that the respondents have been adopting method of pick and choose. The petitioner in para no.9 of the writ petition has produced the Schedule showing 11 persons and stated that the service record of the persons as shown in the Schedule was not better than then

that of the petitioner. The petitioner also submitted that as regards Dr. M.L. Bohra, Dr. G.L. Patel, and Dr. M.L. Moriya, their adverse remarks have been expunged on their representation but the respondents have not denied this fact in their reply. All that has been pleaded in reply to para no.9 of the writ petition is that the facts of each one are altogether different and the petitioner cannot compare his case with others and that too, in absence of complete facts. The respondents have neither categorically denied this fact nor have denied that remarks entered in the APARs of those medical officers were expunged on their representation. The respondents have thus subjected the petitioner to invidious discrimination. In my view, therefore, this is a fit case for interference by this Court.

For discussion made above, the writ petition is allowed and the letter dated 1.2.1993 (Annex.1) and 29.9.1993 (Annex.3) are quashed. The respondents are directed to give all consequential benefits to the petitioner.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-